

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEREK S. THOME, *As Administrator*  
*of the Estate of Charity L. Thome,*  
*Deceased,* c/o Kline & Specter, P.C.,  
1525 Locust Street, Philadelphia, PA  
19102

*Plaintiff,*

v.

PENNSYLVANIA STATE POLICE  
OFFICERS JOHN DOE  
1 THROUGH 20  
1800 Elmerton Avenue  
Harrisburg, PA 17110

*Defendants.*

CIVIL ACTION NO. 1:20-cv-02167-SHR

**PLAINTIFF'S MOTION TO COMPEL NONPARTY CITY OF LEBANON POLICE  
DEPARTMENT'S COMPLIANCE WITH SUBPOENA**

Plaintiff moves this Court under Federal Rules of Civil Procedure 37 and 45 to compel Nonparty City of Lebanon Police Department to comply with a subpoena Plaintiff served on it on November 20, 2020, with a response date of December 4, 2020. The City of Lebanon Police Department's responses are now two weeks overdue. In support of this Motion, Plaintiff relies on and incorporates by reference, as if set forth in full herein, the accompanying Brief and Exhibits.

Respectfully submitted,

**KLINE & SPECTER, P.C.**

By: 

THOMAS R. KLINE, ESQUIRE  
TRACIE L. PALMER, ESQUIRE  
BENJAMIN O. PRESENT, ESQUIRE  
*Attorneys for Plaintiff*

Dated: December 17, 2020




**CERTIFICATE OF SERVICE**

I, Benjamin O. Present, hereby certify that, on the date set forth below, I served a true and correct copy of Plaintiff's Motion to Compel on counsel for Nonparty City of Lebanon Police Department via electronic mail as follows:

Donna Long Brightbill, Esquire  
LONG BRIGHTBILL  
315 S. Eighth Street  
Lebanon, PA 17042  
Phone: (717) 272-6646  
Fax: (717) 270-9687  
[dlbrightbill@longbrightbill.com](mailto:dlbrightbill@longbrightbill.com)

Dated: December 17, 2020

**KLINE & SPECTER, P.C.**

By:   
THOMAS R. KLINE, ESQUIRE  
TRACIE L. PALMER, ESQUIRE  
BENJAMIN O. PRESENT, ESQUIRE  
*Attorneys for Plaintiff*



**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 26.3**

I, Benjamin O. Present, Esquire, hereby certify that I have conferred with counsel for Nonparty City of Lebanon Police Department in a good faith effort to resolve by agreement the issues raised by the accompanying motion without the intervention of the Court but have been unsuccessful. Namely:

- I spoke with counsel for the City of Lebanon Police Department on December 3, 2020, in which conversation counsel suggested that the police department should be able to avoid compliance with the subpoena because of its claimed lack of involvement in the underlying incident. I responded that this contention was disputed and legally irrelevant, as set forth more fully in the accompanying Brief. Counsel stated that she would follow up with her client and get back to me.
- After not hearing back from counsel, I followed up by email on December 7, 2020, but received no response.
- I again followed up on December 11, 2020, to which counsel for the police department informed me that she was attending her firm's holiday party, and would be in touch on Monday, December 14, 2020.
- Having heard nothing from counsel on Monday, December 14, I emailed counsel on Tuesday, December 15, 2020, with no response.
- Finally, on December 16, 2020, I emailed counsel stating that my office would be filing a motion to compel. Counsel initially did not respond, but eventually responded and reiterated her suggestion that the City of Lebanon Police Department should be able to avoid compliance with the subpoena because of its claimed lack of involvement in the underlying incident. Counsel further indicated that she had not begun gathering documents but would call undersigned counsel on December 17, 2020. I agreed to not file a motion until 2 p.m. to give counsel a chance to call me and work out an agreement. Counsel did not contact me on December 17, 2020 within the prescribed time.

Dated: December 17, 2020

**KLINE & SPECTER, P.C.**

By: 

THOMAS R. KLINE, ESQUIRE  
TRACIE L. PALMER, ESQUIRE  
BENJAMIN O. PRESENT, ESQUIRE  
*Attorneys for Plaintiff*




**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

I, Benjamin O. Present, Esquire, hereby certify that emailed counsel for the City of Lebanon Police Department seeking concurrence in the accompanying Motion to Compel but did not obtain the same.

**KLINE & SPECTER, P.C.**

Dated: December 17, 2020

By:   
THOMAS R. KLINE, ESQUIRE  
TRACIE L. PALMER, ESQUIRE  
BENJAMIN O. PRESENT, ESQUIRE  
*Attorneys for Plaintiff*